1859

(17,644.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 530.

CHARLES M. WHITE, JOHN C. THOMPSON, AND HENRY ECKSTEIN

vs.

AUGUST T. SCHLOERB, EUGENE B. SCHICKEDANTZ, AND HENRY ROEWITZ, TRUSTEE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

	Original.	Print.
Certificate of United States circuit court of appeals for the seventh circuit	1	1
Statement of case	1	1
Questions certified	4	2

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1 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1899, January Session, 1900.

In the Matter of AUGUST T. SCHLOERB and EUGENE B. SCHICKEDANTZ, Bankrupts.

CHARLES M. WHITE, JOHN C. THOMPSON, and Henry Eckstein, Petitioners,
v.
AUGUST T. SCHLOERB, EUGENE B. SCHICKEDANTZ, and Henry Roewitz, Trustee.

No. 641. Original. In Bankruptcy.

In this case, duly argued and submitted to this court, there arise questions of law, concerning which this court desires the instruction and advice of the Supreme Court of the United States.

On the 13th day of September, 1899, August T. Schloerb and Eugene B. Schickedantz, who were respectively residents and inhabitants of the eastern district of Wisconsin, and who were copartners in trade in the said district, filed their voluntary petition in bankruptcy in the district court of the United States for that district. On the same day they were duly adjudged bankrupt
2 by that court and the matter referred to a referee in bankruptcy for further proceedings according to law. They had at that date a stock of goods contained in a store, the entrance to which was locked by the direction of the referee. Thereafter, on the 21st day of September, 1899, James Cogan and Bernard Cogan, who were copartners, commenced an action of replevin against the bankrupts in the circuit court of the State of Wisconsin for the county of Winnebago, in which county the store of the bankrupts was located, to recover the possession of certain specified goods then in the store of the bankrupts and forming part of their stock of goods. On the same day the proper undertaking and requisition to the sheriff of the county of Winnebago, according to the law of the State of Wisconsin, were delivered to the petitioner Charles M. White, who was then the sheriff of the county, who delivered it for execution to the petitioner Henry Eckstein, who was the undersheriff of said sheriff. In pursuance of said requisition the undersheriff, on the same day and before the selection and appointment of a trustee in the bankrupt proceedings, forcibly entered the store of the bankrupts and took possession of certain goods—part of the goods specified in the writ of replevin. On the 23rd day of September, 1899, the bankrupts presented their petition to the district court of the United States for the eastern district of Wisconsin, setting forth the facts above recited, and also alleging that the goods so taken under the writ of replevin were part of a bill of goods purchased by them of the plaintiffs in that writ, and were their lawful property. The petition alleges that the goods were in the possession of the petitioners, the sheriff and undersheriff mentioned, and John C. Thompson, the attorney for the plaintiffs

in the writ of replevin, and asked the court that they be
3 compelled to redeliver the goods to the district court sitting in bankruptcy, from whose possession they were taken, and that they be enjoined from any disposition thereof. Upon the filing of the petition the district court issued its mandate requiring the petitioners here, the sheriff, the undersheriff, and the attorney mentioned, to show cause before that court, at a time and place mentioned, why the seizure of the goods under the writ of replevin should not be vacated and set aside and the goods returned to the bankrupts or placed in the possession of the marshal of the court, or such other person as the court should direct, and why they should not be respectively enjoined from interference with the property so seized, and in the meantime restraining them from such interference. The petitioners specially appeared upon the return day mentioned in the mandate and moved the district court to set aside and vacate its mandate or order to show cause for want of jurisdiction in the court of bankruptcy over the subject-matter, and also presented proof by affidavit to the effect that the assertion of title to the goods in question by the plaintiffs in the writ of replevin was founded upon the claim that the bankrupts had purchased the goods of them upon false and fraudulent representations upon which reliance had been placed; that before the writ of replevin they had elected to rescind the sale and had demanded of the bankrupts the return of the goods. The court of bankruptcy at the hearing and on the 26th day of October, 1899, made the following order: "It is hereby ordered that said Charles M. White, Henry Eckstein, and John C. Thompson be, and they are hereby, restrained from sale or other disposition of the property mentioned in said petition herein, and they are hereby directed to turn over
4 and deliver the said property so taken by them from the estate of the bankrupts to the trustee appointed herein within twenty days from the date of this order; and it is further ordered that the trustee on delivery of the said property keep the same separate and apart from other property, to abide the further order of the court, and that in case sale of said property is hereafter ordered that the proceeds of said sale be kept separate and apart to abide such further order of the court."

The opinion of the court upon that hearing is reported *In re* Schloerb, 97 Fed. R., 326. The petitioners here by their original petition filed in this court have presented the matters of law raised by the order so made by the district court sitting in bankruptcy.

The questions of law upon which this court desires the advice and instruction of the Supreme Court are:

First. Whether the district court sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.

Second. Whether, after adjudication in bankruptcy, an action in a State court can be commenced and maintained against the bankrupt to recover property in the possession of and claimed by the bankrupt at the time of the adjudication.

Third. Whether the property of a bankrupt upon his adjudica-

tion in bankruptcy is *in custodia legis* of the bankrupt court and can be taken possession of under process of a State court.

These questions the court on this day orders certified and submitted to the Supreme Court of the United States for its proper decision.

January 25, 1900.

WM. A. WOODS.
JAS. G. JENKINS.
ROMANZO BUNN.

Endorsed on cover: File No., 17,644. U. S. C. C. of appeals, 7th circuit. Term No., 530. Charles M. White, John C. Thompson, and Henry Eckstein *vs.* August T. Schloerb, Eugene B. Schickedantz, and Henry Roewitz, trustee. (Certificate.) Filed February 15th, 1900.